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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,134	01/11/2002	Hyun Jeong Park	Q67500	5826
7590	10/04/2005		EXAMINER	
SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC 2100 Pennsylvania Avenue, N.W. Washington, DC 20037-3213			ORTIZ CRIADO, JORGE L	
		ART UNIT	PAPER NUMBER	
		2655		
DATE MAILED: 10/04/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/042,134

**Applicant(s)**

PARK, HYUN JEONG

**Examiner**

Jorge L. Ortiz-Criado

**Art Unit**

2655

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 3 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires 3 months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  They raise the issue of new matter (see NOTE below);
  - (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13.  Other: \_\_\_\_\_.

W. R. YOUNG  
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed 09/06/2005 have been fully considered but they are not persuasive.

The amendment filed 12/07/2004 introduces NEW MATTER into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: All occurrences of "EFM (Eight to Fifteen Modulation)" throughout the specification and claims are changed to "EFM (Eight to Fourteen Modulation)", specifically FOR THE PURPOSE of CHANGING THE SPECIFICATION OF THE INVENTION CLAIMED AND CLAIMS TO BE DRAWN TO AN INDUSTRY STANDARD eight to fourteen modulation. These amendments changes and alters the scope of the invention AS ORIGINALLY FILED AND CLAIMED. It raises a doubt as to the possession of the claimed invention at the time of filing.

Furthermore, the "EIGHT TO FIFTEEN MODULATION" is in FACT an industry standard readily used by one of ordinary skill in the art, and would readily recognize the original disclosure of EIGHT TO FIFTEEN MODULATION especially in the context of reading binary data from a CD. See for example the attached U.S. Patent Publication No. 6,169,717, and specifically col. 1, lines 6-22, recited below:

"In general, there are several forms of optical disk systems in use today, including: a DVD system, such as a digital video (or versatile) disk system, a DVD-ROM system, a DVD-RAM system, and A COMPACT DISK (CD) system, such as a compact disk player (CDP) system or a CD-ROM system. In a conventional optical disk reading apparatus, picture quality is adversely affected when the optical disk is scratched or when there is a manufacturing defect in the optical disk. Although digital signal processor (DSP) circuits employing error correction attempt to cure such defects, their applications are somewhat limited. Data is commonly stored on an optical disk in holes, or pits and is modulated according to STANDARD FORMATS, FOR EXAMPLE THE WIDELY-USED EIGHT-TO-FIFTEEN MODULATION (EFM)".

Applicant is required to cancel the NEW MATTER in the reply to this Office Action.

Claims 3-5, 9-11 and 15-17 as fails to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 3,5, 9, 11, 15, and17 recites the limitation "EFM (EIGHT TO FOURTEEN MODULATION)", the examiner cannot readily ascertain/map with the above claim language where in the specification as originally filed such a disclosure/support is found in the descriptive portion of the specification by reference to the drawings, designating the part or parts therein to which the term "EFM (Eight to Fourteen Modulation)" applies.

Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. > E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364,1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily).< In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551(CCPA 1969). See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322(Fed. Cir. 1989)

In regard to claims 3, 9 and 15 Applicants argues that Koudo et al. does not teach or suggest a control signal generation based on a prescribed range corresponding to "a gap" between EFM and transfer pointer.

The Examiner cannot concur because Koudo et al. discloses a phase difference detection means for comparing points ("address locations") in the buffering means where the data is recorded and the transfer data is read, and identifying transfer pointer leads or lags behind a pointer, which is the phase difference results which a prescribed gap range between EFM and transfer pointer within a cumulative error region that causes a phase difference (leads/lags). The phase between the address locations in the buffering means is obtained as a phase error. Furthermore, Koudo et al. discloses that the phase (lead/lag result) is fed back to the spindle motor to compensate the phase difference accelerating or decelerating the spindle motor.

In regard to claims 4,10 and 16 Applicants argues that Koudo et al. does not teach or suggest "varying the p[prescribed range]. The Examiner cannot concur because as claimed Koudo et al. discloses a phase difference/lead-lag detection means is configurable to permit varying the prescribed range. Koudo et al. discloses a prescribed cumulative error region, and where the region is configurable to varying within a prescribed range that causes such cumulative errors.

It has been held that the recitation that an element is "configurable to" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138

In regard to claims 5,11 and 17 Applicants argues that Koudo et al. does not teach or suggest adding -  $\alpha$  or +  $\alpha$  to a frequency error value.

The Examiner cannot concur because Koudo et al. discloses wherein the spindle motor controls the rotation of the disk with reference to the output of the frequency comparison and the output of the phase comparison, the output of the phase difference means #39 and the frequency comparison circuit #38 are added into the spindle motor control circuit # 3, and accelerates or decelerates the spindle motor due the to values outputted. The phase result either if is (+) or (-) is utilized by the spindle control circuit together with the error value outputted from the frequency comparison circuit..

W. R. YOUNG  
PRIMARY EXAMINER